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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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# No. 570

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EDWARD A. HUNT AND ROBERT A. HUNT, Co-partners Trading as HUNT'S MOTOR FREIGHT AND FOOD PRODUCTS TRANSPORT,

*Petitioners,*

*vs.*

EDWARD CRUMBOCH, PRESIDENT; JOSEPH E. GRACE, SECRETARY-TREASURER, ET AL.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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## PETITIONERS ANSWER TO RESPONDENT'S SUPPLEMENTAL BRIEF.

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HIRSH W. STALBERG,
PETER P. ZION,
*Counsel for Petitioners.*

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*Petitioners,*

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## PETITIONERS' ANSWER TO RESPONDENT'S SUPPLEMENTAL BRIEF

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The respondents have filed a Supplemental Brief. Statements in the Supplemental Brief require correction. On Page 3, respondents state:

> "It is possible that during argument the impression *may have been given that the respondents here entered into an agreement with the A & P, either expressed or implied, that the ousting of Hunt was a condition precedent to the negotiations which were carried on between them.* Such is not the case, and it is too preposterous to think that the union negotiated for a

closed-shop contract primarily out of revenge for Hunt." (Italics supplied.)

The elimination of Hunt certainly *was* a condition precedent. The following is from page 40 of the record, from the testimony of Crumboch, protagonist of the union:

> "Q. Mr. Crumboch, when was the first time you notified anyone representing the A. & P. during the negotiations that Hunt *would have to be eliminated,* that Hunt would not be accepted in the union or you would not give him a contract? (Italics supplied.)
>
> A. I guess it would be the first time I ever sat down with him. I don't know when that would be.

(p. 633):

> Q. Was that as early as the fall of 1938?
>
> A. I imagine in December, when I negotiated in Mr. Gray's office with Mr. Shimmat, from Chicago.
>
> Q. December, 1938?
>
> A. I think it was December, 1938.
>
> Q. At that time you notified Shimmat you would not negotiate with Hunt?
>
> A. Whatever the date was."

The following is from the testimony of Mr. MacIver, the official in charge of operations for the A. & P. (Record p. 29):

> "Q. Prior to that time you were already notified by them they would't take Hunt in, prior to February 4th they told you they wouldn't take Hunt in?
>
> A. Yes, true.
>
> Q. They wouldn't give him a contract?
>
> A. Right."

And similarly, all through the testimony of Mr. MacIver as well as the defendant Crumboch, it is clear that discussions took place between the respondents and the A. & P. referring to the elimination of Hunt as a contract hauler by A. & P., and of the necessity to do so by A. & P. because

of the position taken by the respondents: (Record 28-30 passim).

Record, R. 30:

> "Q. Was it your personal desire or a desire of your company *at any time* up to the present time to terminate the services of Hunt Brothers with your company? * * *
> A. No, sir."

R. 32, 33:

> "Q. And were it not for this arrangement that you had with the union or the direction of the union, as far as Hunts are concerned, you would have stated that they would still be with you; is that correct, Mr. MacIver?
> A. Yes, sir."

Finding 14, 15 and 19 (R. 44) by the Trial Judge disclose efforts of petitioners and their employees to comply with all requests of the respondent union; and that the business of the petitioners has been destroyed by reason of the union's acts.

However, the petitioners never stated or implied that the "union negotiated for a closed-shop contract primarily out of revenge for Hunt". What the petitioners charge and what the record establishes is that the respondents conspired to destroy the business of the petitioners, and that they did so, through their organized union power, by the medium of first making it necessary for Hunt to enter into a contract with the union, and for his employees to become members of the union, before Hunt could get work: and then refusing to contract with Hunt or admit his employees into the union *as long as they worked for Hunt:* and finally by driving the Hunts out of their jobs on the ground that they had not contracted with the union and that their employees were not union members.

This is repetition; but it is necessary as a clarification of the issues in view of the above excerpt from the Respondent's Supplemental Brief.

Respondents state at Page 4 of their Supplemental Brief:

> "*The union acted no differently with respect to Hunt's employees than it did with respect to employees of other trucking concerns.* Hunt's employees were eligible to union membership on the same terms and on the same basis as everyone else, that is on condition that they would work only for *employers who had contracts with the union.*" (Italics supplied.)

The statement is ingenious, but disingenous. Hunt's employees were *not* "eligible to union membership on the same terms and on the same basis as everyone else". The truth is that they were not eligible to union membership as long as they worked for their employer. Employees of the other haulers similarly situated *were* eligible to union membership while working for their employers.

It is all very well to say that Hunt's employees were ineligible to union membership as long as they worked for an employer who had not entered into a contract with the union; but a different light is thrown on the situation when the record discloses, as of course it does, that the Hunts sought to contract with the union but the union refused: and not only that but that the Union's refusal to contract with Hunt was part of the respondents' conspiracy to destroy the business of the Hunts.

MacIver of the A. & P. testified (R. 29):

> "Q. Mr. MacIver, did the union officials at any time during the year 1939 request that you dispense with the services of any other contract hauler than Hunt Brothers?
>
> * * * * * * *
>
> A. No, I don't think there were any others."

The respondent Crumboch (Record 39):

"Q. Didn't anyone in your union notify Mr. MacIver, of A. & P., not to load Hunt's trucks after February 4, 1939?

A. That is right; we would not work *if Hunt's trucks* worked.

Q. Then you did notify them you would not work if Hunt's trucks worked?

A. That is right.

Q. *You never so notified* him as to *any other hauler* than Hunt, did you?

A. No, I did not.

Q. You accepted into the union all other men who worked for other contract haulers after the contract was signed by A. & P. with the union—all except Hunt?

A. Eventually, yes, sir." (Italics supplied.)

Respondents state (Supplemental Brief Page 4):

"By complying with the rules and regulations of the union, Hunt's employees were eligible to membership as were all others."

No rule or regulation of the union is in the record, nor was any offered in evidence. There is nothing in the record of any rule or regulation that employees were eligible to membership only if they worked for employers who had contracts with the union. It is common knowledge that employees are first accepted as members of a union, and subsequently a contract is made with the employer which provides that the union is the bargaining agent for the employees.

The above quoted statement from Page 4 of the Respondent's Supplemental Brief is inconsistent with the following testimony of the respondent Crumboch:

(R. 41):

"Q. Had you ever permitted any of your men to work for Hunt Brothers after February 1, 1939?

A. After February 1, 1939, no."

(R. 38):

Q. Why did you say, Mr. Crumbock,—or why did you decide that anybody who worked for Hunt, as long as he worked for Hunt, you would not take into the union?

A. Because I would not deal with Hunt on negotiations by us of a contract; I would not sign a union agreement with him, and therefore we could not represent the people.

Q. You would not accept their men for that reason?

A. That is right. * * *

N. T. page 625:

Q. By the way, did you known the names of Mr. Hunt's employees in February, 1939?

A. Don't know them now."

This Court in the Steele [1] and Wallace [2] cases condemned similar discriminatory union practices. In the *Steele* case it appeared that Negroes are excluded from membership in the Railroad Brotherhood. The Brotherhood, purporting to act as representative of the entire craft of railroad firemen, served notice on the railroads announcing the Brotherhood's desire to amend the existing collective bargaining agreement in such manner as ultimately to exclude all Negro firemen from the union. This Court held that such action should be enjoined.

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[1] *Steele* v. *Louisville & Nashville Railroad Company*, 89 Sup. Ct., Adv. Rep. 172.

[2] *Wallace Corporation* v. *National Labor Relations Board*, 89 Sup. Ct., Adv. Rep. 184.

In the *Wallace* case this Court upheld an order of the National Labor Relations Board in an unfair labor practice proceeding. There the acts of the union, certified by NLRB as bargaining representative, consisted of denying membership to employees who had been members of a rival union. With the denial of membership went the right and opportunity of the employees to work.

The impact of the *Steele* and *Wallace* cases upon the case at bar is too patent to require analysis.

Respectfully submitted,

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